

1 MATTHEW D. MURPHEY, SBN 194111

2 MMurphey@gordonrees.com

ARISTOTLE EVIA, SBN 211483

3 Aevia@gordonrees.com

GORDON & REES LLP

4 275 Battery Street, Suite 2000

5 San Francisco, California 94111

Telephone: (415) 986-5900

6 Facsimile: (415) 986-8054

7 ROBERT J. SCOTT, Texas Bar No. 24010385

8 (motion for admission pro hac vice pending)

9 rjscott@scottandscottllp.com

SCOTT & SCOTT, LLP

10 2200 Ross Avenue, Suite 5000

Dallas, Texas 75021

11 Telephone: (214) 999-0080

12 Facsimile: (214) 999-0333

13
14 Attorneys for Defendants

TANEY ENGINEERING, INC. and

15 TANEY CUNNINGHAM

16 EQUIPMENT, LLC

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 AUTODESK, INC.,

20
21 Plaintiff,

22
23
24 TANEY ENGINEERING, INC. et al.

25
26 Defendants

CASE NO. 5:08-cv-03132-JF

Hearing Date/Time:

October 10, 2008 9:00 a.m.

27 DEFENDANTS' MOTION
28 TO DISMISS FOR LACK OF
PERSONAL JURISDICTION
AND IMPROPER VENUE

///

1 TO EACH PARTY AND TO THE ATTORNEY OF RECORD FOR EACH PARTY
2 IN THIS ACTION:

3 YOU ARE HEREBY NOTIFIED THAT on October 10, 2008 at 9:00 a.m. before
4 the Honorable Jeremy Fogel, Defendants Taney Engineering, Inc. and Taney
5 Cunningham Equipment, LLC ("TCE") will move this Court for an order dismissing the
6 Complaint filed by Plaintiff Autodesk, Inc. ("Autodesk") for lack of personal jurisdiction
7 and improper venue pursuant to Federal Rule of Civil Procedure 12(b)(2) and (3).
8

9 This motion shall be made on the ground that the Court does not have personal
10 jurisdiction over defendants and this Court is an improper venue because both
11 Defendants are nonresidents of the State of California. This motion will be based on this
12 motion and the points and authorities included herein and the Declaration of Edward
13 Taney filed herewith.
14

15 INTRODUCTION

16 This lawsuit should be dismissed pursuant to Federal Rule of Civil Procedure
17 12(b)(2) and 12(b)(3). Plaintiff alleges that Defendants infringed copyrights owned by
18 Plaintiffs. At the time these acts allegedly occurred, neither Defendants was a resident
19 of the state of California. Neither Defendant has ever been a resident of the State of
20 California, and neither Defendant has established minimum contacts with California
21 such that the Court could exercise personal jurisdiction over them. Plaintiff's claims
22 against Defendants do not arise out of or relate to any of Defendants' sporadic contacts
23 with California. As such, personal jurisdiction is lacking, and this Court should dismiss
24 Plaintiff's lawsuit against Defendants.
25
26
27
28

1 Similarly, Plaintiff's lawsuit against Defendants should be dismissed because the
2 Northern District of California is an improper venue for this action. If an action is filed
3 in an improper judicial district, the court may dismiss the action upon timely objection
4 or, in the interest of justice, may transfer the case to a district where the action could
5 have been brought. 28 U.S.C. §1406(a). Venue in copyright litigation is proper in any
6 judicial district where a defendant would be amenable to personal jurisdiction if the
7 district were a separate state. Neither Defendant is amenable to personal jurisdiction in
8 this district because Defendants do not have the requisite minimum contacts with the
9 district. It is therefore appropriate to dismiss the action under Federal Rule of Civil
10 Procedure 12(b)(3). In the alternative, the case should be transferred to the District of
11 Nevada, Las Vegas Division, where Defendants reside.

12 **FACTS**

13 Autodesk is a Delaware corporation. Upon information and belief, Autodesk's
14 principal place of business is in San Rafael, California. On June 30, 2008, plaintiff sued
15 defendants for copyright infringement in the Northern District of California, San
16 Francisco/Oakland Division. Autodesk alleges that Taney and TCE infringed Autodesk's
17 copyrights in certain Autodesk products in violation of the Copyright Act.

18 Taney is a Nevada corporation with its principal place of business in Las Vegas,
19 Nevada. (Taney Declaration at ¶ 5.) TCE is a Nevada limited liability company with
20 its principal place of business in Las Vegas, Nevada. (Taney Declaration at ¶ 6.) Taney
21 and TCE are and always have been Nevada business entities with their principal places
22 of business in Nevada, and both businesses provide services exclusively in Nevada and
23

1 Arizona. (Taney Declaration at ¶¶ 3-7.) Neither Defendant has ever had an office,
2 address, or telephone number in California. (Taney Declaration at ¶ 8.) Neither
3 Defendant has ever owned or rented any property in California. (Taney Declaration at
4 ¶ 9) Neither Defendant has ever paid taxes in California. (Taney Declaration at ¶ 10.)
5 Neither Defendant has ever held a bank account in California. (Taney Declaration at
6 ¶ 11.) Neither Defendant, nor their agents, ever traveled to California in connection with
7 any transaction involving Autodesk. (Taney Declaration at ¶ 12.) Neither Taney nor
8 TCE ever purchased any software or other products directly from Autodesk. (Taney
9 Declaration ¶¶ 16-17.) The allegations in the Complaint do not pertain to property or
10 equipment located in California. (Taney Declaration at ¶ 13.)
11
12
13

14 ARGUMENT

15 **POINT I THE CASE SHOULD BE DISMISSED BECAUSE THE COURT DOES NOT**
16 **HAVE PERSONAL JURISDICTION OVER EITHER DEFENDANT, BOTH OF**
17 **WHICH ARE NEVADA BUSINESSES LACKING THE REQUISITE MINIMUM**
18 **CONTACTS WITH CALIFORNIA.**

19 The case should be dismissed because this Court does not have personal
20 jurisdiction over Taney or TCE. When a nonresident defendant files a motion to dismiss
21 for lack of personal jurisdiction, the plaintiff bears the burden of establishing that the
22 Court can exercise personal jurisdiction over that defendant. *Mattel, Inc. v. Greiner &*
23 *Hausser GmbH*, 354 F.3d 857, 862 (9th Cir. 2003). Federal courts do not have
24 jurisdiction over a nonresident defendant unless the nonresident defendant has
25 purposefully established “minimum contacts” with the forum state and the exercise of
26 jurisdiction comports with “fair play and substantial justice.” *Burger King Corp. v.*
27
28

1 *Rudzewicz*, 471 U.S. 462, 475-76 (1985); *World-Wide Volkswagen Corp. v. Woodson*,
2 444 U.S. 286, 291-92 (1980); *International Shoe Co. v. Washington*, 326 U.S. 310, 316
3 (1945). Failure to satisfy any of these standards would deprive a defendant of due
4 process of law. *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267,270 (9th Cir.
5 1995). Because neither Taney nor TCE have the necessary minimum contacts, it would
6 be a violation of due process for this Court to exercise jurisdiction over them.
7

8
9 **A. The Court Does not Have General Jurisdiction Over Taney or TCE.**

10 Neither Taney nor TCE have the continuous and systematic pattern of contact
11 with California to establish general jurisdiction. Due process permits the exercise of
12 “general jurisdiction” if the defendant has “continuous and systematic” contacts with the
13 forum. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).
14 The test for general jurisdiction is “an exacting standard, as it should be, because a
15 finding of general jurisdiction permits a defendant to be haled into court in the forum
16 state to answer for any of its activities anywhere in the world.” *Schwarzenegger*, 374
17 F.3d at 801. The Complaint does not allege that Defendants had or have “continuous
18 and systematic contacts” with California. In fact, the Complaint does not allege that
19 Taney or TCE had any contacts with California. Autodesk therefore failed to even plead
20 a basis for general jurisdiction.
21
22
23

24 In addition, the evidence indicates that neither Taney nor TCE had the requisite
25 minimum contacts to establish general jurisdiction:
26
27
28

- 1 • Taney and TCE are, and always have been, Nevada businesses created and
2 administered under the laws of the State of Nevada. (Taney Declaration
3 ¶¶ 3-7.)
4
- 5 • Taney and TCE have their principal places of business in Las Vegas,
6 Nevada and provide services exclusively in Nevada and Arizona. (Taney
7 Declaration ¶¶ 3-7.)
8
- 9 • Neither Defendant has ever had an office, address, or telephone number
10 in California. (Taney Declaration ¶ 8.)
11
- 12 • Neither Defendant has ever owned any real estate or other assets located
13 in California. (Taney Declaration ¶ 9.)
14
- 15 • Neither Defendant has ever paid taxes in California. (Taney Declaration
16 ¶ 10.)
17
- 18 • Neither Defendant has ever held a bank account in California. (Taney
19 Declaration ¶ 11.)

20 Simply stated, Defendants' contacts with California are insufficient in both quantity and
21 quality to support general personal jurisdiction over Defendants.

22 **B. The Court Does not Have Specific Jurisdiction Over Taney or TCE.**

23 The Court also does not have specific jurisdiction over Taney or TCE. A court
24 may not exercise specific jurisdiction over a nonresident defendant unless the
25 nonresident defendant's activities were "purposefully directed" to the forum state and
26 the litigation resulted from alleged injuries that "arise out of" or "relate to" those
27 activities. *See Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414
28

1 (1984). As formulated by the Ninth Circuit in *Bancroft & Masters, Inc. v. Augusta Nat'l*
2 *Inc.*, 223 F.3d 1082 (9th Cir.2000), specific jurisdiction exists when “(1) the defendant
3 has performed some act or consummated some transaction within the forum or otherwise
4 purposefully availed himself of the privileges of conducting activities in the forum, (2)
5 the claim arises out of or results from the defendant’s forum-related activities, and (3)
6 the exercise of jurisdiction is reasonable.” *Bancroft & Masters*, 223 F.3d at 1086. The
7 Ninth Circuit has explained that the first prong of this analysis “includes both purposeful
8 availment and purposeful direction. It may be satisfied by purposeful availment of the
9 privilege of doing business in the forum; by purposeful direction of activities at the form;
10 or by some combination thereof.” *Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
11 *L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006). As noted, neither Taney nor TCE
12 ever purposefully availed themselves of the opportunity to do business in California.
13

14 Autodesk has instead claimed that Defendants purposefully directed activities –
15 the purported copyright infringement – at the forum. In its Complaint, Autodesk basis
16 its jurisdictional claim on a specific jurisdiction argument, asserting that Defendants
17 should have known that Autodesk was located in California, that Defendants “directed
18 and aimed their unauthorized activity at Autodesk located in this Northern District of
19 California,” and that Defendants “knew or reasonably should have known, that Autodesk
20 would likely suffer the brunt of the harm caused by Defendants in California at
21 Autodesk’s principal place of business” in the district. (Complaint at ¶ 4.)
22

23 In making this argument, Autodesk appears to be relying on the Ninth Circuit’s
24 decision in *Yahoo*, where the court set forth an “effects” test to be applied in tort cases:
25
26
27
28

1 “in tort cases, we typically inquire whether a defendant ‘purposefully directs his
2 activities’ at the forum state, applying an ‘effects’ test that focuses on the forum in which
3 the defendant’s actions were felt, whether or not the actions themselves occurred within
4 the forum.” *Yahoo*, 433 F.3d at 1206. The claimed purposeful direction here is that
5 Defendants knew of Autodesk, infringed Autodesk’s copyrights, and knew that Autodesk
6 was headquartered in California and would be affected by the infringement. This
7 “effects” analysis is rigorous – “the defendant allegedly must have (1) committed an
8 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the
9 defendant knows is likely to be suffered in the forum state.” *Yahoo*, 433 F.3d at 1206.
10 Of course, a copyright infringement claim is a creation of federal statute and is not a
11 traditional common-law tort claim. It does not appear that the Ninth Circuit has directly
12 applied this analysis in a copyright infringement case. If that test does apply, however,
13 it has not been met here.

14
15
16
17
18 As the Ninth Circuit has explained, the “expressly aimed” portion of the analysis
19 is satisfied when the defendant “individually target[s] a known forum resident.” *See*
20 *Bancroft*, 223 F.3d at 1087. The decision in *Schwarzenegger*, supports the conclusion
21 that this element of the analysis has not been met. *Schwarzenegger* dealt with an Ohio
22 car dealer whose local Akron advertisements encouraged potential buyers to “terminate”
23 their current car leases in favor of one of defendant’s new cars. The advertisement
24 featured a photograph of Arnold Schwarzenegger in *The Terminator*. When
25 Schwarzenegger tried to sue the car dealership in California for the unauthorized use of
26 his likeness, the Ninth Circuit refused jurisdiction, stressing that the car dealership’s
27
28

1 advertisements were not “expressly aimed” at Schwarzenegger in California.
2 *Schwarzenegger*, 374 F.3d at 807. According to the Ninth Circuit, while the defendant
3 may have perhaps known that Schwarzenegger lived in California, this was insufficient
4 to convey jurisdiction there because the intention behind his advertisement was solely
5 to entice local market Ohioans, not Californians, “to buy or lease cars from Fred
6 Martin.” *Id.* Similarly, Autodesk cannot establish that Defendants “expressly aimed”
7 their conduct at California. If naming a particularly world-famous person as Arnold
8 Schwarzenegger is not individualized targeting for purposes of the analysis, obviously
9 Defendants in Nevada did not expressly aim any conduct at California or forum
10 residents. Defendants in this case did not purposefully intend their conduct to reach or
11 affect Autodesk’s business operations in California. Defendants were not aware that
12 Autodesk was a resident of California, and Defendants did not know that any purported
13 harm from alleged infringement would be suffered in California. Indeed, neither Taney
14 nor TCE ever purchased any software directly from Autodesk. (Taney Declaration at
15 ¶¶ 16-17.)

20 **C. Exercising Jurisdiction Over Defendants Would Offend Traditional**
21 **Notions of Fair Play and Substantial Justice.**

22 This Court’s assumption of jurisdiction over Defendants will offend traditional
23 notions of fair play and substantial justice and will be inconsistent with the constitutional
24 requirements of due process. *See Int’l Shoe*, 326 U.S. at 316. The Court should decline
25 to exercise jurisdiction over defendant because of the burden on Defendants, both of
26 which are Nevada businesses that provide services exclusively in Nevada and Arizona.
27
28

1 Accordingly, none of the files, records, or witnesses relevant to the claim of copyright
2 infringement are located in the District.

3
4 **POINT II THE CASE SHOULD BE DISMISSED BECAUSE THE NORTHERN DISTRICT**
5 **OF CALIFORNIA IS AN IMPROPER VENUE GIVEN THAT NEITHER**
6 **DEFENDANT RESIDES IN THE DISTRICT FOR PURPOSES OF THE VENUE**
7 **STATUTES.**

8 The Court should also dismiss the case because venue is improper. If an action
9 is filed in an improper judicial district, the court may dismiss the action upon timely
10 objection or, in the interest of justice, may transfer the case to a district where the action
11 could have been brought. 28 U.S.C. §1406(a). Plaintiffs must bring actions for
12 copyright violations in the “district in which the defendant or agent resides or may be
13 found.” 28 U.S.C. § 1400(a). Venue in copyright litigation is proper in any judicial
14 district in which a defendant would be amenable to personal jurisdiction if the district
15 were a separate state. *Columbia Pictures Television, Inc. v. Krypton Broadcasting of*
16 *Birmingham, Inc.*, 106 F.3d 284, 288 (9th Cir. 1997), *reversed on other grounds*, 523
17 U.S. 340 (1998). The question then is whether Defendants are amenable to jurisdiction
18 as if the Northern District were a separate state. As discussed above, the Court does not
19 have personal jurisdiction over Defendants, and venue is therefore improper.

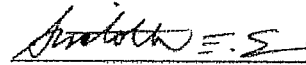
20
21
22 In the alternative, the Court may transfer this case to District of Nevada because
23 Defendants are subject to jurisdiction in that forum, venue would be proper, and the
24 transfer would be in the interests of justice. *See Goldlawr, Inc. v. Heiman*, 369 U.S. 463,
25 467, 82 S. Ct. 913, 916 (1962). Defendants are residents of Nevada and subject to
26 jurisdiction there.
27
28

CONCLUSION

Defendants ask this Court to grant this motion, dismiss Plaintiff's lawsuit, and grant Defendants such other and further relief to which they may be justly entitled.

Dated: August 5, 2008

Respectfully submitted,



MATTHEW D. MURPHEY, SBN 194111

MMurphey@gordonrees.com

ARISTOTLE EVIA, SBN 211483

Aevia@gordonrees.com

GORDON & REES LLP

275 Battery Street, Suite 2000

San Francisco, California 94111

Telephone: (415) 986-5900

Facsimile: (415) 986-8054

ROBERT J. SCOTT, Texas Bar No. 24010385

(motion for admission pro hac vice pending)

rjscott@scottandscottllp.com

SCOTT & SCOTT, LLP

2200 Ross Avenue, Suite 5000

Dallas, Texas 75021

Telephone: (214) 999-0080

Facsimile: (214) 999-0333

Attorneys for Defendants

TANEY ENGINEERING, INC. and

TANEY CUNNINGHAM

EQUIPMENT, LLC